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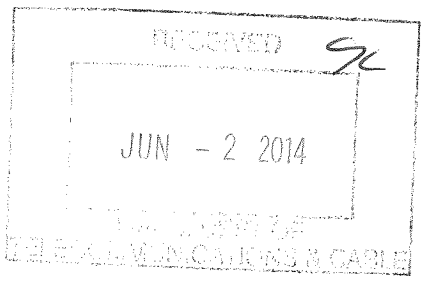
May 30, 2014



VIA EMAIL AND FIRST CLASS MAIL

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
1000 Washington Street
8th Floor, Suite 820
Boston, Massachusetts 02118-6500

Re: Post-Hearing Brief of Cox Rhode Island Telcom LLC ("Cox") and Charter Fiberlink MA – CCO, LLC ("Charter")

Dear Secretary Williams:

On behalf of Cox and Charter, enclosed please find our Post-Hearing Brief for filing in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

Alan M. Shoer

Enclosure

cc: Service List (via U.S. Mail)

683525_1

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Investigation by the Department on its Own Motion to Determine whether an Agreement Entered into by Verizon New England, Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252	:	D.T.C. 13-6

POST HEARING BRIEF OF COX RHODE ISLAND TELCOM LLC AND CHARTER FIBERLINK MA-CCO, LLC

Cox Rhode Island Telcom LLC ("Cox") and Charter Fiberlink MA - CCO, LLC ("Charter") hereby submits their Post Hearing Brief in this proceeding. Cox and Charter support the Competitive Carriers' position that the Traffic Exchange Agreement (DTC Exh. 2) and the VoIP to VoIP Agreement (DTC Exh. 3) (together referred to as "the Agreements") are "interconnection agreements" that must be filed with the Department for approval in accordance with 47 U.S.C. § 252.

INTRODUCTION

Since entering the voice service market following the passage of the Telecommunications Act of 1996 (the "1996 Act"), Cox and Charter have competed vigorously against incumbent local exchange carriers ("ILECs") in New England and in many other areas around the country. Competition in the voice services market was made possible by the landmark 1996 Act, particularly as a result of the interconnection rights conferred by Sections 251 and 252. Cox and Charter have for many years arranged for voice services through interconnection agreements between their certified competitive local exchange carriers ("CLECs") and ILECs, including Verizon, throughout the country. Cox and Charter provide IP-based voice services to their

residential and commercial customers and believe that the 1996 Act enables them to exchange voice traffic with ILECs via IP-to-IP connections. As the voice services industry evolves from TDM to IP, Cox and Charter have strong incentives to ensure a smooth transition in order to meet their business objectives and to provide the highest levels of quality of service to consumers.

Obviously, any disruption or unnecessary delays that impede the transition of networks from TDM to IP is harmful to both the companies and their customers. Because interconnection to the ILEC network is still fundamental to the provision of voice services, it is imperative that the Department ensure that incumbents in the voice market, such as Verizon, do not take advantage of this industry-wide transition to unilaterally impose network changes or terms and conditions that favor Verizon or a few other selected carriers. Cox and Charter certainly support voluntary efforts to reach agreements with other carriers, including the ILECs, with appropriate review by the Department of ILEC interconnection agreements. Nevertheless, this proceeding offers the Department a unique opportunity to re-affirm that the transition from TDM to IP networks does not negate recognized interconnection rights and duties or the critical backstop protections of the pro-competitive framework of sections 251 and 252 of the 1996 Act.

A. If the Agreements contain voice traffic interconnection terms, then they must be filed publicly for Approval.

In this proceeding the Department is investigating whether the "Traffic Exchange Agreement" (DTC Exhibit 2) and the "VoIP-to-VoIP Agreement" (DTC Exhibit 3) are interconnection agreements pursuant to sections 251 and 252 of the 1996 Act. While neither agreement is titled as an "interconnection agreement" the name that parties assign to the agreement is irrelevant to the issue before the Department. It is well settled that the requirement for ILECs to file interconnection agreements for voice traffic with the Department applies regardless of how parties may seek to characterize their agreements or the particular labels or

titles assigned to such agreements. Any agreement "that contain[s] an ongoing obligation relating to section 251(b) or (c) must be filed . . . [with the Department] . . . under [Section] 252(a)(1)."[1]

The transmission, transport and termination of all types of traffic, including VoIP traffic and VoIP-to-PSTN traffic are continuing obligations required by section 251(b)(5).[2] The Competitive Carrier's testimony outlines in detail the provisions of the Agreements that address the transport and termination of voice traffic.[3] This means that if the Agreements address the transport and termination of any form of "telecommunications," then it logically follows that the Agreements are interconnection agreements in accordance with section 251 of the 1996 Act.[4] Moreover, the mandate in section 251(c)(2) is technology neutral. The law requires an ILEC to permit interconnection with its network, with no exception based on the particular network technologies deployed by the parties. It is also well established that "the interconnection obligations set forth in section 251(c)(2) apply to packet-switched services as well as circuit-switched services."[5]

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[1] *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1).* Memorandum Opinion and Order, 17 FCC Rcd 19337, n. 26 (2002)("FCC Qwest Order"). *See also* CC Exh. 1 (Gillan Pre-Filed Testimony) at 4-6.

[2] The FCC determined that "VoIP-PSTN" traffic falls "within the section 251(b)(5) framework." ICC Reform Order at ¶ 933.

[3] *See* CC Exh.1 (Gillan Pre-Filed Testimony) at 13-15.

[4] The term "telecommunications" is defined quite broadly in the Act to include the "transmission, between or among points specified by the user, or information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. §153(50). The FCC has determined that this definition includes all types of traffic. *In the Matter of Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 761 (rel. Nov. 18, 2011)("ICC Reform Order").

[5] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385, ¶ 22 (1999) ("*Advanced Services Order*"), *remanded on other grounds WorldCom, Inc. v. FCC*, 246 F.3d 690 (D.C. Cir. 2001).

As the Competitive Carriers point out,[6] the Michigan Public Service Commission recently concluded that IP-to-IP interconnection for the provision of VoIP services is an "on-going interconnection obligation" under Section 251(c)(2).[7] Following the guidance in the FCC Qwest Order, the Michigan PSC determined that AT&T must provide Sprint with IP-to-IP interconnection, which it determined was an "on-going interconnection obligation" under Section 251(c)(2). The Michigan PSC emphasized the important policy principles behind the requirement of a public filing of IP-to-IP interconnection agreements, noting that filing with a State Commission will advance competition while also discouraging ILECs from discriminating against other competitors. The filing of "all interconnection agreements best promotes Congress' stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms."[8]

The Michigan PSC also highlighted the importance of transparency that is secured by publicly filing interconnection agreements between ILECs and competitive carriers. A public filing permits third-party competitive carriers a means of avoiding discrimination by reviewing the rates, terms and conditions of the agreements to determine the terms upon which ILECs have agreed to interconnection with other carriers and decide whether it would be more efficient and practical to "opt-in" to those terms pursuant to section 252(i) of the 1996 Act. This protection led the FCC to recognize many years ago that Section 252(a)(1) is not merely a filing requirement; indeed, "compliance with Section 252(a)(1) is the first and strongest protection

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[6] CC Exh. 1 (Gillan Pre-Filed Testimony) at 17-18.

[7] *In the Matter of the Petition of Sprint Spectrum L.P. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with Michigan Bell Telephone Company d/b/a AT&T Michigan*, Case No. U-17349, Order dated December 6, 2013 ("Michigan PSC Order").

[8] Michigan PSC Order of March 18, 2014, quoting from *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ¶167.

under the 1996 Act against discrimination by the incumbent LEC against its competitors."[9] This protection remains an important consideration notwithstanding the technological developments in the communications and voice traffic markets.

The threat to competition from keeping interconnection agreements private and unavailable for review by other carriers is real because otherwise an ILEC "may have an opportunity to conceal the rates, terms, and conditions it is providing [to one carrier] while it offers less favorable rates, terms and conditions to other competitors."[10] Without the opportunity to examine interconnection agreements and evaluate the efficiencies of the "opt-in" options made available by section 252(i) of the 1996 Act, competitors are faced with the extra time, risk and financial burdens associated with independent negotiations. If agreements for IP-to-IP interconnection for the exchange of voice traffic were not subject to Section 252, competitive carriers negotiating such agreements would also be unable to seek redress with the Department in the event that negotiations broke down and would have no forum in which to address issues that remained in dispute.

In any event, if competitors are forced to endure further delay, potential discrimination, and unnecessary additional expense in order to secure an IP-to-IP interconnection agreement on terms that are fair and reasonable, this will certainly delay and frustrate the goal "of facilitating industry progression to all-IP networks."[11] The concern that led the Michigan PSC to require AT&T to offer IP-to-IP interconnection to Sprint in a Section 251 agreement is therefore an important consideration in reviewing the applicability of the 1996 Act to the Agreements.

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[9] Id., quoting ¶ 46.
[10] Id. (at pg. 5 of March 18, 2014 Order).
[11] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future, Report and Order and Further Notice of Rulemaking*, 26 FCC Rcd 17663, ¶ 1335 (2011).

Allowing an ILEC the unfettered ability to selectively avoid filing IP-to-IP interconnection agreements for review, approval and/or opt-in by other carriers would set a troubling precedent:

> If the Commission fails to enforce the Section 252(e)(1) filing requirement in this case, it opens the door for ILECs to negotiate separate side agreements that permit the ILEC to selectively conceal from the Commission and other CLECs rates, terms and conditions of interconnection and traffic exchange. In the Commission's opinion, such a holding eviscerates Section 252 and defeats the nondiscriminatory, pro-competitive purpose of the Act.[12]

B. Section 251 of the 1996 Act Requires Verizon, as an ILEC, to promptly respond to requests for IP-to-IP Interconnection by Competitive Local Exchange Providers.

Verizon's duty under section 251(c)(2) is to provide interconnection for "any requesting telecommunications carrier. . . at any technically feasible point within the [ILEC's] network."[13] Verizon is also required by section 251(c)(2) to provide interconnection "that is at least equal in quality to that provided to itself or any subsidiary [or] affiliate."[14] Many ILECs, including Verizon, currently provide IP-to-IP interconnection internally or to subsidiaries or affiliates.[15] Verizon's refusal to acknowledge the applicability of sections 251 and 252 to the Agreements with the Competitive Carriers is therefore contrary to the plain terms of the statute and will inhibit the efforts by competitors to move their networks to IP-to-IP interconnection for VoIP traffic.

The record developed in this proceeding establishes that direct IP-to-IP interconnection enables facilities-based VoIP providers to realize significant bandwidth efficiencies and cost

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[12] Michigan PSC Order, March 18, 2014 at pg. 6.
[13] 47 U.S.C. § 251(c)(2).
[14] 47 U.S.C. § 251(c)(2).
[15] *See, e.g., Connect America Fund, et al.*, WC Docket No. 10-90, Comments of COMPTEL, at 7 (filed Apr. 18, 2011) (citing evidence that "[t]he three largest incumbent LEC enterprises – AT&T, Verizon and CenturyLink/Qwest – all have extensive IP networks but have resisted allowing their competitors to interconnect on an IP-to-IP basis for the exchange of VoIP traffic pursuant to Section 251")

savings, including the ability to deliver traffic through fewer interconnection points.[16] "Congress intended to obligate the incumbent [LEC] to accommodate the new entrant's network architecture," and the ILEC "must accept the novel use of, and modification to, its network facilities to accommodate the interconnector."[17]

The benefits of IP-to-IP interconnection are frustrated by Verizon's refusal to acknowledge the applicability of sections 251 and 252 of the 1996 Act to the Agreements. If Verizon is permitted to continue to do so, the Competitive Carriers (and other competitors) will be forced to maintain existing inefficient interconnection arrangements that require more points of interconnection at greater network expense.

Verizon's legal/regulatory position denying competitors the protections afforded by sections 251 and 252 will also continue to frustrate efforts by regulators to "encourage the shift to IP-to-IP interconnection where efficient" and technologically feasible.[18] And, while Verizon has invited private "commercial" negotiations for IP-to-IP interconnection, its attempt to deny competitive companies the benefits and protections afforded by sections 251 and 252 calls into question the validity of Verizon's "offer," where the quid-pro-quo for opening negotiations requires the competitive carrier to waive important rights secured by the 1996Act, under terms and a timeline unilaterally set by Verizon.[19]

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[16] Hg.Tr.Vol.1: 23,24 (Spinelli); Hr.Tr.Vol.2: 18,52,57,59,125,126,130 (Burt); VZ MA Exh.1 (Panel Pre-Filed Testimony) at 11-13; CC Exh. 3 (Malfara Pre-Filed Rebuttal Testimony) at 5-7; Sprint Exh. 1 (Burt Pre-Filed Testimony) at 26-27.

[17] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ¶ 202 (1996). *See also*, *id.* ¶ 206 ("[T]he Act does not permit incumbent LECs to deny interconnection. . . for any reason other than a showing that it is not technically feasible.").

[18] *See* FCC's National Broadband Plan at 49, Recommendation 4.10.

[19] In the Competive Carriers recent opposition to Verizon's request for an abatement of the proceedings they allege that Verizon terminated negotiations when Cbeyond and PAETEC informed Verizon that negotiations must occur within the section 252 framework. *See* Competitive Carriers' Opposition to Verizon's Motion to Abate, at pg. 5.

Especially for competitive carriers with fewer customers in a given ILEC's footprint, the inability to secure the benefits of sections 251 and 252 in the interconnection process creates an unfair bargaining position when negotiating with any ILEC, much less a company of the size of Verizon. The provisions applicable to ILECs in sections 251 and 252 were intended to alleviate just such an unfair bargaining position. Verizon's suggestion that it too needs special protections afforded by confidentiality in agreements, in order to "preserve a level playing field for Verizon in future negotiations for IP VoIP interconnection agreements with other providers,"[20] ignores the 1996 Act's special obligations placed on ILECs in section 251 and 252 that ensure that incumbents such as Verizon do not use their incumbent status to unfairly discriminate against CLECs. For these reasons, it is important to ensure that competitive carriers have the right to determine the timing for negotiations and to secure the obligations in the 1996 Act that are intended to alleviate some of the inherent disadvantages faced by a CLEC when negotiating with a large ILEC such as Verizon.

Related to this concern is the risk inherent to a competitor that is forced to accept Verizon's terms in order to secure IP-to-IP interconnection with no regulatory "backstop" or oversight by the Department in the event an impasse arises during negotiations.[21] At the hearings, Verizon did not have a clear response when asked what recourse would be available in the event of a dispute during negotiations of a "commercial" IP-to-IP interconnection agreement.[22] Verizon did concede that the 1996 Act is the only existing legal framework for interconnection.[23]

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[20] VZ Exh 9 (Rebuttal Testimony) at 9.
[21] *See* 47 U.S.C. § 251(c)(2)(D) (requiring that interconnection under section 251(c) must be on "terms, and conditions that are just, reasonable, and nondiscriminatory")
[22] Hr. Tr. Vol 1: 67-68 (Vasington).
[23] Hr. Tr. Vol 1:107 (Vasington).

If the 1996 Act represents the "only existing legal framework for interconnection," then the Agreements must be filed within this framework. Only Congress can change the terms of the 1996 Act and deny these protections to competitive carriers. Unless and until that happens, Verizon's refusal to acknowledge the applicability of sections 251 and 252 to these Agreements violates the rights of competitive local exchange carriers to the benefits afforded by the 1996 Act, including nondiscriminatory, just and reasonable IP-to-IP interconnection arrangements with Verizon when they are ready to do so.

CONCLUSION

For the reasons explained above, the Department should determine that the Agreements must be publicly filed with the Department for approval in accordance with 47 U.S.C. § 252 and ensure that they are available to competing carriers for adoption. The evolution of voice services from an analog to digital format 50 years ago, from circuit switching to packet switching, and the continuing efforts by the industry to advance the services offered to customers through IP-to-IP interconnection today do not alter the fundamental legal and regulatory framework established by the 1996 Act. Because the Agreements contain ongoing obligations relating to section 251(b) or (c) they must be publicly filed with the Department. Simply put, the filing of "all interconnection agreements best promotes Congress' stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms."[24]

[24] Michigan PSC Order of March 18, 2014, quoting from *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ¶167.

Respectfully submitted,

COX RHODE ISLAND TELCOM LLC and
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Certificate of Service

I hereby certify that on this 30th of May, 2014, I served a copy of the foregoing Post Hearing Brief of Cox Rhode Island Telcom LLC and Charter Fiberlink MA-CCO, LLC upon all parties of record by mailing a copy of said document by mail, postage prepaid regular via regular mail and via e-mail.